LEE WENG KIN

v.

MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
MOHD. AZMI SCJ
WAN YAHYA J
[SC CIVIL APPEAL NO. 01-76 OF 1990]
26 MARCH 1991

STATUTORY INTERPRETATION: *Meaning of "copy" - Restricted Residence Enactment 1933, s. 3(i).*

POLICE: *Deprivation of liberty - Restricted residence order - Strict interpretation of laws - Accused served with copy of order not signed by Minister - Validity - Effect of - Meaning of "copy" - Certified - Evidence Act 1950, s. 63(a) and (b) - Restricted Residence Enactment 1933, ss. 2(ii), 2A, (i).*

On 19 August 1989, the appellant L was arrested and detained under a restricted residence order issued pursuant to s. 2(1) of the Restricted Residence Enactment 1933 (the Enactment) and on 20 September 1989, he was served with a copy of the order dated the same date restricting him to Kuala Krai for 5 years. This order was not signed by the Minister and merely bore rubber stamped words "T.T, Dato Megat Junid bin Megat Ayob" in the space intended for his signature.

The issue for the Court was the interpretation of the word "copy" in s. 3(i) and its consequential effect on the validity of the order and whether the copy of the unsigned order issued under ss. 2(ii) and 2A of the Enactment and served on L in compliance with s. 3(i) of the Enactment is valid.

Held:

[1] The Court will apply a strict interpretation on laws which restrict or curtail the liberty of the subjects.

[2] The word "copy" appearing in s. 3(i) of the Enactment means a certified copy as provided under s. 63(a) of the Evidence Act 1950 (the 1950 Act) or copies made from the original made from the original by mechanical processes which in themselves ensure the accuracy of the copy as provided in s. 63(b) of the 1950 Act.

[3] An unsigned order as in this case which was partly printed and partly typewritten and not authenticated or certified to be a true copy of the order signed by the Minister is not a copy of the Minister's order as envisaged in s. 3(i) of the Enactment. Therefore, s. 3(i) has not been complied with and the order made by the Minister is invalid and L's restriction to Kuala Krai is null and void.

[L's appeal allowed.]

Cases referred to:

Karam Singh v. Menteri Hal Ehwal Dalam Negeri [1969] 2 MLJ 141
M/s. Hindustan Construction Co. Ltd. v. The Union of India [1967] AIR SC 526
Poh Chin Kay v. Menteri Hal Ehwal Dalam Negeri, Malaysia [1990] 2 MLJ 299

PP v. Koh Yoke Koon [1988] 1 MLJ 45
Re Datuk James Wong Kim Min [1976] 2 MLJ 245
Tan Hoon Seng v. Minister for Home Affairs, Malaysia & Anor. [1990] 1 MLJ 171

Legislation referred to:
Evidence Act 1872 [Ind], ss. 63(a), (b), 76 (ii),(iii)
Federal Constitution, art. 5(1)
Restricted Residence Enactment (FMS Cap 39), ss. 2A, 2(1), (ii), 3(i)

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.,
For the respondents - Suriyadi Halim Omar, Senior Federal Counsel

JUDGMENT

Wan Yahya J:

At the inception of the hearing of this appeal we were informed by Mr. Karpal Singh, Counsel for the appellant and Encik Suriyadi Halim Omar, Senior Federal Counsel appearing on behalf of the respondents that although the singular ground appearing in the memorandum of appeal was neither raised in argument nor reflected in the learned Judge's grounds of judgment, it would nevertheless affect the same question of law identical in issue with an earlier decision made by the same Judge in Kuala Lumpur High Court O.S. No.R8 24-29-90 - *Sam Choy dan Timbalan Menteri Dalam Negeri, Malaysia & Ors.* (on appeal yet to be heard before this Court).

Both Counsels agree that the decisive question to be placed before this Court is whether a copy of an unsigned order issued by the Menteri Hal Ehwal Dalam Negeri, Malaysia pursuant to s. 2(ii) and 2A of the Restricted Residence Enactment 1933 (FMS, Cap. 39) and served on the appellant in compliance with s. 3(i) of the Enactment is valid. We allowed this appeal to proceed on that ground because putting aside the other ground of appeal in the earlier case, the fundamental issue with regard to the validity of the documents served on the appellant in *Sam Choy's* case must in any event affect the outcome of this case.

The facts of the case are not in dispute. The appellant was arrested on 19 August 1989 pursuant to an order dated 19 July 1989, made under s. 2(1) of the Restricted Residence Enactment 1933 (the Enactment) by the Minister of Home Affairs, Malaysia (the Minister). He was detained at Pudu Prison until 20 September 1989, on which date he was served with a copy of an order dated the same day issued by the Minister pursuant to s. 2 of the Enactment. By that order he was restricted to Kuala Krai, Kelantan for a period of 5 years commencing from the date of the order. That copy however was unsigned by the Minister and merely bore rubber stamped words "T.T. Dato' Megat Junid B. Megat Ayob" in the space intended for his signature.

The service of this order made under s. 2(ii) on the appellant is no doubt done in compliance with s. 3(i) of the Enactment which reads:

> When any such order as is referred to in s. 2 subsection (ii) or s. 2A has been made with reference to any person, he shall be taken before the officer-in-charge of the prison in which he is detained and the officer-in-charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside.

In this appeal we are primarily concerned with the interpretation of the word 'copy' as it appears in the above section and its consequential effect on the validity of the order and the requirement of s. 3(i) of the Enactment.

There does not appear to be any explicit Malaysian case law on this subject but some degree of inferential authority on the need to establish the authenticity of a restriction order may be drawn from a passage of the judgment of Ong Hock Thye CJ in *Karam Singh v. Menteri Hal Ehwal Dalam Negeri* [1969] 2 MLJ at 141:

> in my opinion, production by the respondent Minister of an order of detention by him, *ex facie* **regular** and **duly authenticated,** constitutes a peremptory defence to any complaint of unlawful detention and places on the complainant the burden of establishing that the order is unwarranted, defective or otherwise invalid. (Emphasis supplied)

Words of similar expression can also be found in Suffian FJ's (as he then was) judgment in the same case at 152 wherein he said:

> In my judgment, the **onus** of proving the legality of the detention is on the Minister in the first instance. This he can discharge simply by producing the order of detention which, if its **authenticity** and **good faith** are not impugned, is a sufficient answer. If the detainee alleges *mala fides*, as he does here, then the onus shifts to him and it is for him to prove *mala fides*. (Emphasis supplied)

Both these citations are of course said in relation to a detainee's challenge on the legality of a Minister's order in the Internal Security Act but in other respects the principle governing the service of the order and identity of the Minister are the same as in the Restricted Residence Enactment. It stands to reason that, if the authenticity of the order of the Minister itself is challengeable, then an unsigned copy of such an order can more so be open to question.

An India Supreme Court's decision in *M/s. Hindustan Construction Co. Ltd. v. The Union of India* AIR [1967] SC 526, however is nearer in point with our present issue on the interpretation of the word 'copy'. At p. 527 of the judgment the word was discussed in the following terms:

> Now the word "copy" as such is not defined in the Indian Evidence Act I of 1872. But we get an idea of what a copy is from the provision of s. 63 of the Evidence Act. That section *inter alia* defines what secondary evidence means and includes, namely - (i) certified copies as provided in s. 76 of Evidence Act (ii) copies made from the original by mechanical process which in themselves insure the accuracy of the copy, and copies compared with such copies, and (iii) copies made from or compared with the original. Obviously, therefore, a copy means a document prepared from the original which is an accurate or true copy of the original. In *Webster's New World Dictionary*, the word "copy" means "a thing made just like another; full reproduction or transcription".

In our judgment the word 'copy' appearing in s. 3(i) of the Restricted Residence Enactment means a certified copy as provided under s. 63(a) of the Evidence Act, or copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy as provided in s. 63(b)". An unsigned order as in LWK 2 which was partly printed and partly typewritten and not authenticated or certified to be a true copy of the order signed by the Minister is in our view, not a copy of the Minister's order as envisaged in s. 3(i) of the Enactment.

In accordance with our established principle as repeatedly demonstrated in our past judgments, the Court will apply a strict interpretation on laws which restrict or curtail the liberty of the subjects. This principle was expressed in *Re Datuk James Wong Kim Min* [1976] 2 MLJ 245 by Lee Hun Hoe CJ (Borneo) in the following terms:

> In a matter so fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty. The material provisions of the law authorising detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be liberally interpreted. There the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith.

Since then Hashim Yeop Sani SCJ (as he then was) had expressed in *PP v. Koh Yoke Koon* [1988] 1 MLJ 45 the same principle adopted by the Courts in the following words:

> Detention not in accordance with law is inconsistent with the fundamental right guaranteed under Article 5(1) of the Constitution. Where a law deals with detention, there are abundant authorities to show that the provisions of such law must be construed strictly and in the case of doubt the Court should lean in favour of the subject. See also *Andrew s/o. Thamboosamy v. Superintendent of Pudu Prison, Kuala Lumpur*.

Thereafter, as Chief Justice Malaya, he once again propounded in *Tan Hoon Seng v. Minister for Home Affairs, Malaysia & Anor*. [1990] 1 MLJ 171 that:

> The law of preventive detention must be construed strictly and in the case of doubt the Court should lean in favour of the subject.

In a more recent judgment in *Poh Chin Kay v. Menteri Hal Ehwal Dalam Negeri, Malaysia* [1990] 2 MLJ 299, the learned CJ reiterated the judicial view on preventive detention:

> We are fully conscious of the government's effort to combat the drug menace in this country. But there is a fundamental principle involved here. The power to detain a person without trial cannot be exercised by inference. The power must be expressed, clear and unequivocal. Where detention law and the liberty of the individuals are concerned, this the most correct approach for the Courts to apply. There is hardly any need to repeat what has been said on the principle to be followed by the Courts in dealing with detention law. The principles was emphasised in *Re Tan Boon Liat @ Allen & Anor.* at p. 114 reiterated by this Court in *PP v. Koh Yoke Koon and Tan Hoon Seng v. Minister of Home Affairs.* The appeals are allowed.

The law on preventive detention under the Internal Security Act as in the Restricted Residence Enactment, involves the deprivation or serious curtailment of a citizen's personal liberty and as such it must be subjected to a strict judicial interpretation. A citizen whose personal liberty is about to be deprived or seriously restricted has the right to be notified in the most authentic manner, the order which has been made against him.

As we have found the unsigned copy of the order as in Exhibit LKW2 is not a copy required within the meaning of s. 3(i) to be served on the appellant, that section has not been complied with and consequently the order made by the Minister is invalid.

We therefore allow this appeal with costs here and in the Court below and order the deposit to be returned to the appellant.

The appellant's restriction to the town of Kuala Kerai, Kelantan on the authority of the restriction order dated 20 September 1989, purportedly made under the hand of the Minister is hereby declared null and void.

Also found at [1991] 2 CLJ 1301